

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**S.B: Hon'ble Shri Prashant Kumar Mishra, J.**

Criminal Appeal No. 2088 of 1998

Dinesh Gupata and another  
Vs.  
The State of M. P. (Now C.G.)

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Shri Afroj Khan, counsel for the appellants.  
Shri Vinod Tekam, Panel Lawyer for the State.  
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**J U D G M E N T**  
**(22/09/2014)**

This appeal is directed against the judgment of conviction and sentence dated 26/08/1998 passed by the Special Judge, Raipur in Special Criminal case No.1/98 whereby learned Special Judge convicted the appellant under Section 3/7 of the Essential Commodities Act, 1955 (henceforth, '*Act, 1955*') for committing violation of clause 3 (1)(c) and clause 6(1)(c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 1993 (henceforth, '*Order 1993*'). Both the appellants have been sentenced to undergo simple imprisonment for 3 months and fine of Rs. 500/- (each), in default of payment of fine to undergo additional simple imprisonment for 10 days.

2. Facts of the case, briefly stated are, that at about 1.10 P.M. on 11/01/98 Food Inspector Dhamtari Shri R.K. Shukla along with Naib Tahsildar Shri D.R. Margiya raided Hotel Sainath Sweet House, Bus Stand, Dhamtari belonging to father of the appellant No.1. During raid it was found that one domestic LPG cylinder of Indian Oil Corporation (henceforth '*IOC*') was in the use for preparing snacks (Samosa) whereas another LPG cylinder of Hindustan Petroleum Corporation (henceforth, '*HPC*') was also lying in the Hotel. The cylinder in use was fitted with

brass regulator which was not supplied by the IOC. The raid Panchnama (Ex.P/1) was prepared in the presence of witnesses Narendra Shrivastava (PW-3) and Sunil Kumar Gupta (PW-4). The seizure memo (Ex.P/2) was prepared demonstrating seizure of both the cylinders, one regulator and one rubber pipe. Seized articles were given in Supurdnama to Mohan Lal Agrawal vide Ex.P/3. A report was submitted to the Collector, Raipur vide Ex.P/5 and a written complaint was lodged with the Dhamtari Police vide Ex.P7 whereupon FIR Ex.P/8 was registered by the said Police.

3. In course of trial the prosecution examined Devlu Ram Margiya, the Naib Tahsildar as PW-1, Ram Kishore Shukla (PW-2), Narendra Shrivastava (PW-3), Sunil Kumar Gupta (PW-4), Balram Gayadin (PW-5), Sahdev Thakur (PW-6), Dinesh Kumar Sharma (PW-7) and Ashok Kumar Dwivedi (PW-8).

4. In their accused statement both the appellants admitted that the Hotel belongs to them, however, they denied having committed any offence and pleaded false implication.

5. Learned counsel for the appellants would submit that offence under clause 3(1)(c) is not made out against the appellant No.1 and the appellant No.2 has died during pendency of the appeal, therefore, the present appeal deserves to be allowed. He would submit that, even otherwise, the prosecution has utterly failed to prove the charges against both the appellants.

6. Copy of the death certificate of appellant No.2 Shivram has been submitted by learned counsel for the appellants. The said certificate has been issued by the Registrar (birth and death) Dhamtari. Consequent upon the death the appeal preferred by appellant No.2 Shivram Gupta

S/o Baldev stands abated, therefore, appeal filed by appellant No.2 Shivram S/o Baldev is dismissed as abated.

7. The Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 1993 has been made in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. Clause 3 (1)(c) of the Order 1993 provides that where a person has been granted a connection for Liquefied Petroleum Gas under the Public Distribution System then he shall not use Liquefied Petroleum Gas for any purpose other than for cooking. Thus the gravamen of the charge is directed against the person in whose name the gas connection has been provided. When a person in whose name gas connection is provided permits another person to use it for any purpose than cooking, a person actually using the gas cylinder is not covered under clause 3 of the Order 1993.

8. In the case in hand two cylinders one each belonging to IOC and HPC has been recovered. In para 2 of the impugned judgment it is mentioned that one gas connection card in the name of appellant No.2 Shivram Gupta was seized from the premises whereas the other card belongs to (PW-5) Balram Gayadin. Thus none of the gas connection was provided to the appellant No.1 Dinesh Gupta, therefore, in the absence of any proof that the appellant No.1 has used the gas connection granted to him for any other purpose than cooking, his conviction under clause 3(1) (c) of the Order 1993 is not justified and the same deserves to be set-aside.

9. The other charge is of violating clause 6(1)(c) which provides that no person shall possess filled or empty cylinder, gas cylinder valve or pressure regulator, unless he is a consumer and the same has been supplied by a distributor, a Govt. Oil Company or a parallel marketer.

The essence of the charge under this clause is that the cylinder, valve or pressure regulator should have been supplied by distributor, a Govt. Oil Company or a parallel marketeer. In course of raid the appellant No.1 was found using the gas cylinder by fitting a brass pressure regulator which was not supplied by the distributor or the Oil Company. Although it has been argued that seizure of the brass pressure regulator is not proved because the independent witnesses have not fully supported the prosecution but on a reading of the statement of (PW-3) Narendra Shrivastava and (PW-4) Sunil Kumar Gupta it would appear that both the witnesses have admitted their signature in the raiding Panchnama and the seizure memo. The witnesses have not stated that they have been pressurized by the Food Inspector or the Naib Tahsildar or that the seizure memos were prepared at some other place, therefore, the seizure memo is proved.

10. Once it is proved that the appellant No.1 was using a pressure regulator not supplied by the distributor or the Oil Company, violation of clause 6(1)(c) of the Order 1993 is established and the appellant No. 1 has rightly been held guilty of committing offence under Section 6(1)(c) of the Order 1993.

11. Learned counsel for the appellant would submit that the appellant has remained in jail for about 7 days which has not been disputed by learned State counsel. The offence took place in the year 1998 and since then more than 16 years have elapsed. The appellant No. 1 is neither the owner of the Hotel nor the gas connection was issued in his name. He was present in the Hotel as he is the son of owner of the Hotel. Section 7(1)(a)(ii) of the Essential Commodities Act provides that for any adequate or special reason to be mentioned in the judgment, the Court may impose a sentence of imprisonment for a term less than 3 months.

The Control Order 1993 having not been made with reference to clause (h) or clause (i) of sub-Section (2) of Section 3, it carries minimum sentence of 3 months, however, as stated above, less than minimum sentence can also be awarded.

12. Considering the reasons mentioned above, which in the opinion of this Court is adequate for imposing less than minimum sentence and for the fact that the appellant No.1 has already undergone 7 days of jail sentence and has already deposited fine of Rs.500/-, I find the present to be a fit case for reducing the jail sentence to the period already undergone.

13. Accordingly, the appeal preferred by appellant No.1 is allowed in part in the following terms:-

- Conviction of appellant No.1 under Clause 3(1)(c) of Order 1993 is set-aside,
- Conviction of appellant No.1 under Clause 6(1)(c) of Order 1993 is maintained,
- Jail sentence imposed upon appellant No.1 Dinesh Gupta is reduced to the period already undergone.

14. Since the appellant No.2 has died, appeal preferred by the appellant No. 2 Shivram Gupta is dismissed as abated.

JUDGE